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Economic and Social Council

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Committee on Economic, Social and Cultural Rights

Sixty-third session

Summary record of the 16th meeting*

Held at the Palais Wilson, Geneva, on Wednesday, 21 March 2018, at 3 p.m.

Chair: Ms. Bras Gomes

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Sixth periodic report of Spain

* No summary records were issued for the 14th or 15th meetings.

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The meeting was called to order at 3.05 p.m.

Consideration of reports (*continued*)

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Sixth periodic report of Spain (E/C.12/ESP/6 and E/C.12/ESP/QPR/6)

1. *At the invitation of the Chair, the delegation of Spain took places at the Committee table.*

2. **Mr. González-Aller Jurado** (Spain) said that, in 2012, the Government had adopted an economic policy and strategy to restore macroeconomic stability and growth, in order to halt the fall in employment and promote recovery from the economic crisis. Public investment in education, health care and pensions had enabled the welfare system to withstand the effects of the crisis. Unemployment benefits had increased during the crisis through the introduction of programmes to help the long-term unemployed, while there had also been a large-scale government policy to provide assistance to retired workers. All such measures aimed to reflect the minimum core content of all rights under the International Covenant on Economic, Social and Cultural Rights, in line with the previous recommendations of the Committee on Economic, Social and Cultural Rights.

3. The introduction of the Comprehensive Strategy against racism, racial discrimination, xenophobia and related forms of intolerance was helping to prevent and combat discrimination, which affected the enjoyment of economic, social and cultural rights. Moreover, the National Roma Integration Strategy 2012–2020 aimed to mitigate the effects of the crisis on the Roma population and improve their living conditions. The National Action Plan on Business and Human Rights had been approved in July 2017.

4. The new Spanish Employment Activation Strategy had been passed in December 2017, and the Government aimed to reach its goal of having 20 million people in employment by the end of 2019, having already created 500,000 new jobs since 2013. The Spanish unemployment rate had decreased more than in any other eurozone country, and Spain had experienced the highest rate of job creation in the region in 2017.

5. The gender pay gap had been notably reduced and was below the European average. The Government was discussing new measures to reduce gender disparities in the labour market, in addition to extending paternity leave and increasing payments to pensioners with children. The interprofessional minimum wage had increased by 8 per cent in 2017 and would increase further between 2018 and 2020, following the recent adoption of an agreement by the Government and the social partners. Moreover, the Spanish Strategy on the Social Responsibility of Businesses 2014–2020 and the Spanish Strategy for the Social Economy, which had 63 support measures for businesses, had both been adopted.

6. A plan to combat irregular employment and social security fraud was in place, in addition to a law increasing the role of the Inspectorate of Labour and Social Security in promoting and protecting non-discrimination and the equality of treatment and opportunities. The Inspectorate also worked to detect suspected trafficking in persons, prevent the employment of persons under 16 years of age and ensure that the labour restrictions on those aged between 16 and 18 were enforced. Advances in ICT had increased the efficiency of targeting in the Inspectorate's activities.

7. The final report of the National Plan of Action for Social Inclusion 2013–2016 had been published, and indicators of social exclusion and poverty had recently shown improvements for the first time since the start of the crisis. The Government was developing a national strategy to prevent and combat poverty and social exclusion for the period 2018–2020. Other measures that had been adopted included discounts in electrical bills for domestic users, depending on their income and personal circumstances.

8. The level of pensions had made it possible to reduce significantly the percentage of older persons at risk of poverty and social exclusion. Non-contributory pensions ensured that all citizens were able to receive an allowance, free medical and pharmaceutical care, and certain free social services. The number of recipients of such pensions had increased in

recent years. Moreover, the National Strategy for Older Persons was at an advanced stage of the administrative process, and the Strategy for Health Promotion and Disease Prevention in the National Health System had been adopted.

9. Exceptional measures had been adopted in order to protect the right to housing of those worst affected by the crisis. Under the State Housing Plan 2018–2021, persons at risk of eviction and with few resources were able to access unoccupied housing and could receive up to 100 per cent rental assistance. The Government was encouraging the development of more rental or leasehold housing, which would make it possible to increase the amount of available housing and thereby reduce rents for those with lower incomes.

10. Moreover, the Government had adopted legislative measures to assist persons with mortgage loans who were unable to meet their financial obligations, by making it possible to restructure mortgage-related debt. The evictions of families at a particular risk of exclusion had been suspended until 2020. In addition, a Social Fund for Housing had been created to provide coverage for persons who had already been evicted from their place of residence. The Comprehensive National Strategy for Homeless Persons (2015–2020) had made it possible to develop coherent measures to eradicate homelessness by providing accurate assessments of the number of homeless persons and their situation.

11. The parliament was currently reviewing a bill on credit agreements for consumers related to residential immovable property that would improve transparency and expand consumer rights. It was in line with directive 2014/17/EU of the European Parliament and the Council of the European Union, and included provisions that would strengthen legal protection and help to create contracts that were more balanced.

12. Over the previous 15 years, average life expectancy at birth in Spain had increased by almost 4 years. Non-communicable diseases were the leading cause of death and disability, but the rate of premature death caused by chronic illness had been reduced among men and women. Thanks to the effective coordination, cohesion, quality and equality of the country's health services, waiting lists had been reduced and new medicines introduced.

13. A strategic plan for school coexistence had been developed under the Strategic Framework for Education and Training 2020, to ensure that educational establishments were safe spaces able to provide the best possible education. The recent creation of the National Observatory for School Coexistence would help to achieve that objective. Under the plan for lowering school dropout rates, the dropout rate had fallen from 30.8 per cent in 2008 to 18.3 per cent in 2018. All of the educational reforms that had been implemented emphasized the key role of teachers, and a new teacher training programme had been introduced in 2017. In addition, the Culture Plan 2020 had been implemented and included various collaborative policies and programmes.

14. **Mr. Uprimny** (Country Rapporteur) said that, as established in the open letter sent to States parties to the Covenant in May 2012, austerity measures were permissible under the Covenant as long as they were proportionate, temporary and did not negatively impinge on economic, social and cultural rights. Such measures must be lifted when there was a sufficient economic recovery. As Spain had enjoyed a sustained recovery, he would appreciate any information on discussions to lift the austerity measures, most of which had been adopted as emergency decrees but remained in place. For example, there appeared to have been no discussion on lifting Royal Decree-Law No. 16/2012 on restricting access to health care for irregular migrants, despite the fact that some studies had indicated that refusing regular preventive care could increase health-care costs.

15. Development aid had fallen from 0.41 per cent of GDP in 2012 to 0.18 per cent in 2016. While such decreases were normal during a crisis, the country's commitment of 0.70 per cent should be achieved following economic recovery. The reduction in aid had significantly affected specific population groups, including Roma, persons with disabilities and migrants. It was unclear how autonomous communities could ensure that the rights of those groups were protected, as attempts to challenge austerity measures had been blocked by the Constitutional Court. He asked what the outcome of those measures was on ensuring the full enjoyment of rights among marginalized groups. Moreover, in view of the

worsening conditions in reception centres for migrants and asylum seekers, particularly in Ceuta and Melilla, he would appreciate information on any policies to improve conditions.

16. The Government had justified its austerity measures by indicating that resources had to be reallocated in order to address the crisis. However, some analysts had suggested that, as the country was no longer in an emergency situation, the Government had alternative means of gathering resources. For example, tax exemptions for certain groups could be eliminated, potentially raising approximately €19 billion, and work could be carried out on tax avoidance and tax evasion, which could raise approximately €40 billion. He asked why such mechanisms were not being used to allow austerity measures to be lifted.

17. It appeared that, apart from the right to education and certain labour rights, the majority of economic, social and cultural rights were not considered fundamental rights under the Constitution. They were also not protected under any organic acts or *amparo* actions and were therefore not legally enforceable. He would appreciate specific examples of judicial decisions on those rights, including the rights to water, health, housing and food.

18. Although Act No. 63/2003 had incorporated into Spanish law two European directives on non-discrimination, the Act was very general and did not clearly provide for the legal protection of citizens or for sanctions in cases of discrimination. It would be useful to have a statutory law on the right to equality covering all potential areas of discrimination.

19. Owing to the country's political and administrative divisions, there remained regional disparities in public spending and the enjoyment of the rights enshrined in the Covenant. For example, in general there was less expenditure per capita in autonomous communities in southern Spain, which affected the quality of education and the risk of falling below the poverty line. In view of regional economic differences and policy restrictions imposed on autonomous communities by the central Government, he would appreciate information on how the Government could guarantee a minimum level of nationwide enjoyment of the rights in the Covenant.

The meeting was suspended at 3.40 p.m. and resumed at 3.50 p.m.

20. **Mr. Valverde Álvarez** (Spain) said that, in accordance with the Stability and Growth Pact, which Spain had signed together with other Eurozone countries, the State's expenditure could not exceed its revenue. The Pact enabled Spain to exercise good governance and financial prudence and to achieve a good level of social, economic and regional cohesion.

21. Tax exemptions served as a tool of social policy. In recent years, the tax exemptions available to large families and families caring for a member with disabilities had increased. The money made available through such exemptions, which now amounted to some €9 billion, could be accessed by families before they had paid the corresponding tax.

22. In order to ensure that the public funds required to protect Covenant rights were available, the number of mechanisms for combating fraud had been increased, additional staff had been recruited and existing staff had been redistributed. As a result, the revenue obtained by the State had increased significantly between 2015 and 2017.

23. **Ms. González del Yerro** (Spain) said that Royal Decree-Law No. 16/2012 had been adopted in order to ensure that expenditure on health care was more effective. Under that Royal Decree-Law, health-care coverage had been extended to all Spanish nationals, including persons in long-term unemployment and persons returning to Spain after living abroad. Prescription charges were set on the basis of income, and the range of basic health services available to persons with disabilities and certain categories of irregular migrants had been extended. Irregular migrants under the age of 18 years, asylum seekers, pregnant migrants and victims of trafficking were entitled to the same health-care benefits as Spanish nationals, including emergency medical assistance and treatment of infectious diseases and mental health problems. Irregular migrants had the option of subscribing to a health-care agreement, under which they acquired the same right to health care as Spanish citizens. In cases where migrants did not possess documentation and could not pay for public health care, the invoice for their treatment was sent to their country of origin. Over 250,000 irregular migrants had registered with the public health-care system.

24. Although the economic crisis had led to reductions in spending on health care, that expenditure had been increasing since 2015.

25. **Ms. Rodríguez Alba** (Spain), noting that employment was the best means of fighting inequality and social exclusion, said that employment figures in recent years had been very encouraging. Persons in employment not only earned a salary but also acquired personal dignity and became eligible for benefits that would protect them in the future.

26. In addition to Act No. 63/2003 on non-discrimination, a number of other pieces of legislation prohibited discrimination in the workplace on grounds of ethnicity, sexual orientation, gender and disability. Such legislation included definitions of both direct and indirect discrimination. Article 17 of the Workers' Statute provided that any rulings, decisions and provisions that might result in workers being subjected to direct or indirect discrimination were null and void. Article 55 of that Statute provided that rulings related to any discriminatory decision or action were null and void. Fines were imposed on any companies that were found to have acted in a discriminatory manner.

27. **Ms. Marín Luengo** (Spain) said that the Directorate General for Labour and Social Security Inspection had undertaken over 1,500 campaigns to identify and eradicate all forms of discrimination in access to employment and working conditions, including on grounds of gender, immigration status and disability.

28. Following the launch of a campaign to combat fraud in 2012, an increasing number of actions had been taken to identify companies operating in the informal economy. Additional resources had been allocated to combating fraud, and cooperation between different government bodies and the autonomous communities had been enhanced in order to increase the effectiveness of anti-fraud measures.

29. **Ms. García Gasalla** (Spain) said that, although there had been a 73 per cent reduction in State support for development cooperation from 2008 to 2015, the funds allocated to that area had increased slightly between 2015 and 2016. A further sign of the Government's good intentions in that regard was provided by the recent adoption of the Fifth Master Plan for Spanish Cooperation, which gave significant priority to human rights.

30. **Mr. González-Aller Jurado** (Spain) said that regional disparities in access to education resulted from the varying budgets available to the autonomous communities. The Government attempted to address such disparities by redistributing tax revenue in a manner that enhanced social and financial cohesion between the autonomous communities.

31. **Ms. Aragonés Pomares** (Spain) said that the fact that Spain did not have a comprehensive law on non-discrimination in the workplace did not mean that protection was not afforded to persons claiming to have suffered such discrimination. Provisions in the Criminal Code related to hate and discrimination had been amended: Act No. 4/2015, the Statute on victims of crime, had been adopted; a network of some 53 victim-support units had been established; and 87 publicly funded offices for the protection of victims of racial or ethnic hate crime had attended to around 2,250 cases between March 2013 and October 2017.

32. Surveys and studies were carried out to identify persons vulnerable to discrimination and to obtain their views on that issue. The surveys were taken into account when drafting policies related to discrimination. Practical guides were also issued to raise the general public's awareness of discrimination and the measures that could be taken by persons subjected to it.

33. **Ms. Ruiz Bautista** (Spain) said that a number of measures, including the implementation of the National Roma Integration Strategy, 2012–2020, had been taken to reduce the impact of the economic crisis on the Roma population. According to a study examining the housing conditions of the Roma, the number of Roma living in shanty towns or sub-standard housing had fallen between 2007 and 2015. Furthermore, the number of Roma children attending secondary school had increased and the illiteracy rate among adult Roma had fallen. In 2017, a considerable amount of funding had been allocated to combat child poverty among the Roma population. The minimum income programme had been enhanced to provide additional support to all families on low incomes, including a significant number of Roma families.

34. Measures had been taken to increase access to employment among persons with disabilities. In accordance with the Act on Public Sector Contracts, companies working on State contracts and public bodies were required to ensure that a certain proportion of their staff were persons with disabilities.

35. The funds allocated from income tax revenue to bodies providing support to disadvantaged social groups, including the Roma, immigrants and persons with disabilities, had increased from 2015 to 2016.

36. **Mr. Vizcarro Germade** (Spain) said that the temporary migrant accommodation centres in Ceuta and Melilla were intended to provide basic support and accommodation to migrants and asylum seekers before they moved to the mainland. Aside from accommodation, the centres provided residents with health care, counselling, legal advice and support with administrative procedures. Special support was also provided to minors, nurseries were made available to children under 3 years of age, and steps were taken to identify possible victims of trafficking. Although the centres were currently struggling to provide an appropriate level of care to their residents, plans were in place to increase their capacity.

37. **Mr. Ferrán Priestley** (Spain) said that, since 2014, there had been an increase in State spending on education and in the number of grants and scholarships awarded to students. Through regional cooperation plans, steps were being taken to allocate funding to the autonomous communities in order to address regional disparities in educational attainment. The *PROEDUCAR* programme had been established to promote high educational standards and to prevent children from abandoning the education system.

38. **Mr. Parra** (Spain) said that social, economic, cultural and other human rights, including those for which protection was not provided in the Constitution, were justiciable before the ordinary courts. The right to accommodation, the right to education, the right to health, the right to life, and the right to an adequate standard of living had been established by a number of court rulings. In particular, a recent ruling issued by the Constitutional Court had established that irregular migrants were entitled to receive basic health care in order to ensure that their right to life was protected.

39. **Ms. Blázquez Martín** (Spain) said that, in recent years, awareness of the importance of the Covenant had increased among the judiciary. In the day-to-day workings of the courts, it was clear that the Covenant served as a set of guiding principles, including in areas not directly related to Covenant rights. The Covenant also informed decisions pertaining to the rights of children and of persons with disabilities, and provided judges with greater flexibility in interpreting the law. The courts gave more weight to the right to housing, as enshrined in the Covenant, the Constitution and the Charter of Fundamental Rights of the European Union, than they had in the past.

40. **Ms. Villegas** (Spain) said that Covenant rights had a real impact on people's lives. For instance, the Provincial High Court of Albacete had overturned a criminal conviction for misappropriation based on its interpretation of the right to housing.

41. **Mr. Sadi** said that, while the accession of Spain to the Optional Protocol was welcome and indicated that Covenant rights were justiciable, he wondered whether the Covenant had figured in the Government's planning and policymaking when it had adopted austerity measures to address the recent economic crisis. Similarly, he wished to know what steps had been taken to create jobs and whether policies in that regard had been formulated with due regard for the Covenant.

42. Considering the proximity of Spain to Africa, he believed that the influx of refugees and migrants was likely to swell in the coming years. What was the Government's long-term vision for resolving that problem in a way that preserved the culture and protected the interests of Spanish people while respecting the country's international obligation to provide shelter?

43. **Mr. Kedzia** (Country Task Force) said that the Constitution was vague as to which provisions would prevail in the event of a contradiction between Spanish law and the Covenant. He would be grateful if the delegation could shed light on the Covenant's position in the country's legal system and its application in practice.

44. **Mr. Uprimny** said that Royal Decree-Law No.16/2012 represented a setback for irregular migrants' access to health care; he wished to know whether the State party planned to re-examine the restrictions that had been introduced, in order to determine whether they were necessary and proportionate.

45. He was interested to learn of the judicial decisions taken in respect of Covenant rights; the Committee would appreciate being provided with a list of such decisions. However, he was concerned that some Constitutional Court rulings — including decision No. 113 of 2011, in which the Court had upheld the constitutionality of legislation on mortgage enforcement proceedings in a case brought by the occupant of a dwelling who had no other home — did not take due account of the right to housing. Moreover, he recalled that the Committee had addressed that issue in its views on communication No. 2/2014 (E/C.12/55/D/2/2014), finding that the State party had violated the right to housing of the complainant by failing to provide her with an effective remedy. Given that the failure to guarantee the right to housing had a concrete impact on peoples' lives, he asked why the Government did not ensure that all economic, social and cultural rights were justiciable to the same extent as civil and political rights.

46. **Mr. González-Aller Jurado** (Spain) said that many European governments had been obliged to take measures to deal with the severe economic crisis. While the effectiveness of such measures was a moot point, he believed that successive Spanish administrations had acted keeping in mind the potential economic and social impact on citizens, and politicians had been frank in acknowledging errors that could have been avoided.

47. There was no easy answer to the question about the long-term response to migration flows. Recognizing that the phenomenon was likely to continue and to increase, the Government participated in the relevant forums of the European Council and was undertaking studies to find equitable and humane solutions. In his view, not only Spain but the whole world wished to address migration not only from an economic perspective but also from a human and ethical one, recognizing that it was driven by threats to the lives and the economic well-being of human beings and providing opportunities for a decent life in the country of origin. The Government aimed to organize the reception of migrants and to respect their rights to work, to health and to the education of their children.

48. **Mr. Parra** (Spain) said that notwithstanding the primacy of the Constitution, in the event of a contradiction between Spanish law and an international treaty, the provisions of the treaty would prevail.

49. **Ms. Blázquez Martín** (Spain) said that although the cases mentioned by Mr. Uprimny gave the impression that the Constitutional Court interpreted the right to housing differently, in recent years there had been a revolution in terms of how that right was understood. In fact, the Constitutional Court had recently issued a decision based on a new interpretation, to the effect that all means of communicating with persons at risk of losing their homes must be exhausted before the posting of a notice at the outset of mortgage enforcement proceedings.

50. **Ms. González del Yerro** (Spain) said that, although the Government did not plan to amend Royal Decree-Law No.16/2012 in the short term, in reality the provision of public health services to migrants extended beyond the groups that she had mentioned previously. In June 2016, the Constitutional Court had ruled that the Decree-Law was in conformity with the international instruments signed by Spain, including the Covenant, the Convention on the Rights of the Child, the Charter of Fundamental Rights of the European Union and the European Social Charter. Furthermore, the level of State-funded health-care coverage for irregular migrants was among the highest of all European countries. The Government shared the Committee's concern that the health care provided to irregular migrants should be as effective as possible; in practice, that sometimes meant providing care and sending the bill to the migrant's country of origin.

51. **Mr. Kedzia** said that he was grateful for the State party's analysis of the impact of the labour reform adopted in 2012. In that context, considering that wage moderation had been cited as a factor in the improvement of private-sector employment, he wished to know what restrictive measures had been applied as part of the labour market reform and whether

they were temporary or had been designed to be a stable solution that would make the economy more competitive. Was the State party considering any further steps to boost employment among youth, migrants, Roma, persons with disabilities and other groups? He would also appreciate information on measures to combat long-term unemployment, such as strengthening the capacity of regional employment services, which played a crucial role but lacked resources.

52. Considering that the economy was strengthening, the Committee wished to know what mechanisms were in place to adjust wage levels to the improving situation. Notwithstanding that wage adjustments were determined in accordance with International Labour Organization (ILO) instruments, it would appreciate details regarding institutional solutions, the time frame or periodicity of adjustments, and the involvement of trade unions in the process, among other aspects.

53. Noting that Spain had a high percentage of employees on temporary contracts, which were associated with poor working conditions and a higher risk of poverty, he wished to know whether some aspects of the labour reform had created an incentive for companies to hire workers on temporary contracts.

54. The Committee remained concerned about the gender gap in wages and promotions and the fact that women were concentrated in the low-paid service sector and in jobs requiring more modest qualifications. It therefore welcomed the information regarding a number of initiatives and best practices intended to address those problems, such as the tools for self-diagnosis of a gender-based wage gap, and wished to know the extent to which those initiatives had already changed the global picture of gender inequality. Had they been launched on a pilot basis or were they indicative that a structural change was under way?

55. It was regrettable that the Committee had not received information on the proportion of unionized workers. He wished to know whether the increased participation of trade union representatives in decision-making processes following the 2012 reform was due to the establishment of a stable institutional framework and procedures for their participation. Information might also be provided on concerns about the uptake of decentralized wage bargaining at the company level.

56. The right to strike was guaranteed under the Constitution, but the State party had failed to provide data on cases in which that right had been exercised. The Committee had been informed that in 2015 more than 300 workers who had participated in strikes had been charged with offences in 81 criminal and administrative proceedings. Prison terms totalling more than 120 years had been demanded in response to the criminal charges. According to ILO, such action violated the State party's commitments under certain conventions. He wished to know whether steps had been taken to prevent any recurrence of such violations and would appreciate receiving relevant data for 2016 and 2017.

57. Referring to question No. 4 of the list of issues, he said that social security rights had reportedly been severely affected by the economic crisis. As a result, the current level, coverage and scope of social benefits were insufficient to guarantee a decent life for beneficiaries. The delegation was invited to comment on those reports.

58. The sustainability of the pension system, especially in an ageing society, tended to be high on the political agenda. According to a European Union report, there had been a marked decline in social dialogue on the pension issue since the 2012 tripartite agreement. Trade unions in the State party had held demonstrations in October 2017, calling for a sustainable scheme. He asked whether there was any prospect of reaching a new tripartite agreement on the subject. He also wished to know what measures, such as reallocation of tax revenues, were being taken to reduce the pension system deficit in the short term.

59. According to a report published in 2017 by the Organisation for Economic Co-operation and Development (OECD), pensioners' ability to supplement their income through further employment was limited. He would appreciate information regarding the disincentives they faced. A critical element of the reform was reportedly the limited application of indexation to pension payments. The International Monetary Fund (IMF) had

apparently recommended a rate of 0.25 per cent, which the trade unions found unacceptable. The delegation was invited to comment on the issue.

60. **Mr. González-Aller Jurado** (Spain) said that there had been demonstrations throughout Spain against gender-based wage inequality in both the public and private sectors. Trade unions and pensioners had also protested against the pension system. The Government was looking into the possibility of implementing the 0.25 per cent IMF recommendation, but he agreed that neither unions nor pensioners would be satisfied with that rate.

61. **Ms. de la Concha Renero** (Spain) said that the unemployment rate had exceeded 26 per cent in 2012 and a rate of over 50 per cent had been recorded for persons under 30 years of age. As many companies affected by the crisis had been unable to take remedial action, they had reduced their staff. Young people with temporary contracts had been particularly severely affected. The reform measures sought to promote an increase in both short-term and long-term employment, including for young people, women and persons with disabilities, and to promote sustained and stable growth and an increase in companies' productive capacity. Enterprises were encouraged to remain flexible so that they could adjust to the changing needs of the labour market. The crisis had demonstrated that they tended to opt for temporary contracts, which were cheaper and easier to terminate. Yet some wages tended to rise at times of economic crisis, reflecting the huge gap between employees with permanent and temporary contracts. The reform measures also sought to promote training in a variety of different areas, especially for young people, in order to boost workers' potential and professional attitudes. As unacceptable rates of youth unemployment persisted, a series of support and stimulus measures had been taken to encourage enterprises to employ young people. During the worst periods of crisis, part-time contracts had prevented a significant reduction in employment and had preserved workers' links with the labour market.

62. The overall unemployment rate of 26 per cent in 2012 had been reduced by about 10 per cent, and the 50 per cent youth unemployment rate by an even higher percentage. There was also a continuous marked increase in permanent contracts. As the Government was aware of the difficulty of maintaining such a high rate, it had proposed engaging in a dialogue with social partners on action to combat the lack of job security, to promote permanent contracts and to prevent the abusive use of successive temporary contracts. In cases of abuse, sanctions should be imposed on companies and victims should be compensated.

63. The status of women in the labour market had greatly improved. In fact, there had never been so many working women. Although the wage gap was currently about 14 per cent, it was a great deal lower than, for example, the rate in Germany, which was about 21 per cent. Occupational segregation was banned, and disadvantageous treatment of women was prohibited by Organic Act No. 3/2007 on equality and article 4 of the Workers' Statute. The wage gap could be due, inter alia, to incorrect evaluation of jobs, lack of transparency in promotion procedures or inadequate information regarding wage entitlements. Family responsibility was another important factor. With a view to addressing that issue, the Government had recently increased paternity leave to four months. Provision had also been made for teleworking. Proposals to reduce the wage gap, inspired by European Commission Recommendation 2014/124/EU of 7 March 2014, highlighted the need for transparency, setting of neutral and consistent objectives for men and women, provision of information to workers on wage entitlements in order to assess discrimination, and auditing of companies.

64. The Government was committed to supporting tripartite labour negotiations. After the drafting of Royal Decree-Law No. 3/2012, the purpose of which was to address an exceptional and urgent economic situation, technical meetings had been held with social stakeholders and a number of amendments to the text had been adopted.

65. Collective bargaining was mandatory in Spain for both employers and workers, and it played a key role in adjusting working conditions to changes in the economic situation and in responding to the situation in individual companies. Official statistics, which she would send to the Committee, demonstrated an exponential growth in collective bargaining

between 2012 and 2017. The Spanish trade union system was based more on electoral representativeness than on membership.

66. **Mr. Dasgupta** (Country Task Force) said that the data provided by the State party on measures taken to combat poverty indicated that there had been a reversal in 2015 in the negative trends generated by the economic crisis. Modest improvements had since been recorded in most but not all indicators; the risk-of-poverty rate, for instance, had increased from 20.4 per cent in 2013 to 23.3 per cent in 2016 and continued to rise. There were also major disparities between autonomous communities. In 2016, only 12 of the 19 communities had succeeded in lowering the indicator of poverty and social exclusion; it stood at 27.9 per cent for Spain as a whole, at 44.6 per cent for the Canary Islands and at 13 per cent for Navarre. He wished to know what action the State party was taking to reverse the negative trend in the risk-of-poverty rate. He also asked whether there were any plans to reduce the high poverty and social exclusion indicators in disadvantaged communities, such as the Canary Islands, Ceuta and Andalusia.

67. According to the State party's report, the Social Fund for Housing had only 9,865 housing units for allocation to persons evicted from their homes during the economic crisis. According to a report issued by the Ombudsman in 2013, the country's 276,000 social housing units accounted for 2 per cent of all dwellings, which was a very low percentage. He requested updated figures and asked why there were so few social housing units. The budget for access to housing had reportedly declined by more than 70 per cent since 2009. He would appreciate an explanation of that alarming drop and asked whether responsibility for social housing was assigned primarily to the private sector. The State party had failed to reply to the questions regarding the reduction of homelessness raised in paragraph 20 of the list of issues.

68. The delegation was invited to provide evidence of its claim that the provisions of Royal Decree-Law No. 16/2012 restricting access to health care for undocumented migrants were not intended to reduce spending on health care but to widen coverage for citizens and legal residents. The Committee had been informed that in 2015 direct spending by households on health services had been 26.3 per cent higher than in 2009, that pensioners were required to pay for services that had previously been free of charge, and that some 400 items had been removed from National Health System funding. He asked whether the State party's claim that the aim was to rationalize the health system constituted a post facto justification. If not, he wished to know whether steps had been taken to calculate the costs of providing better services to citizens and legal residents, and to identify how such costs could be offset by minimum cuts in benefits to illegal migrants.

69. With regard to the finding by the Constitutional Court that Royal Decree-Law No. 16/2012 was consistent with the State party's obligations under article 12 of the Covenant, he pointed out that, according to paragraph 34 of the Committee's general comment No. 14, everyone resident in a State party, including asylum seekers and illegal immigrants, was entitled to the highest attainable standard of health. He asked whether the Constitutional Court had taken the general comment into account.

The meeting rose at 5.55 p.m.

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Committee on Economic, Social and Cultural Rights

Sixty-third session

Summary record of the 17th meeting

Held at the Palais Wilson, Geneva, on Thursday, 22 March 2018, at 10 a.m.

Chair: Ms. Bras Gomes

Contents

Consideration of reports (*continued*)

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The meeting was called to order at 10 a.m.

Consideration of reports (*continued*)

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Sixth periodic report of Spain (*continued*) (E/C.12/ESP/6 and E/C.12/ESP/QPR/6)

1. *At the invitation of the Chair, the delegation of Spain took places at the Committee table.*

2. **Ms. Martín Bernabé** (Spain) said that the Government used a range of tools to foster employment and entrepreneurship, including service packages or charters and an employment strategy developed in cooperation with the autonomous communities. Moreover, the authorities participated in a programme developed by the European Commission to assess the performance of public services.

3. The national employment strategy featured a range of measures to improve employability and foster entrepreneurship among priority groups by providing tailored training to meet the needs of the job market. The strategy was evaluated on an annual basis, in order to help the Government develop annual plans and allocate appropriate resources to the autonomous communities.

4. Plans of action targeted vulnerable groups, including long-term unemployed workers over the age of 45 years, benefit claimants and persons under the age of 30 not in work or education. Measures for the latter, within the framework of the Youth Guarantee programme, included guidance and training to help them enter the job market or re-enter the education system. Since the public employment service had become involved in managing the programme, the number of participants had more than doubled to over 1 million. The Government had also launched a programme to promote the employment of persons with disabilities, including through incentives for employers; by the start of 2017, the programme had helped more than 80,000 people find a job. The Government was working with the autonomous communities to ensure that policies were developed and coordinated in such a way as to ensure better services to citizens.

5. **Ms. Rodríguez Alba** (Spain) said that the right to strike was enshrined in the Constitution and protected by law; no internal or external sanctions could be imposed on striking workers. The use of propaganda or other non-violent forms of persuasion was considered part of the right to strike. However, any action involving coercion was an offence under the Criminal Code, as it prevented the enjoyment by others of rights such as the right to work or to moral integrity.

6. **Ms. Ángeles Villegas** (Spain), in response to a question about court cases related to strike action, said that available court data indicated that 22 proceedings related to the right to strike had been initiated in 2015. Discrepancies between the number of cases lodged and the number of proceedings resulting in a conviction stemmed from the fact that such cases generally involved group, rather than individual, actions. Amendments to the Criminal Code in 2015 had lessened the severity of the penalties imposed, by establishing a maximum sentence and introducing fines as an alternative to imprisonment; the courts could decide, on a case by case basis, which type of penalty to impose. The 2015 amendments applied retroactively to persons charged prior to the date when the new provisions had entered into force.

7. Under the provisions of the Criminal Code, picketing involving violence towards persons or property constituted a criminal offence, as it prevented others from exercising their rights. In 2017, the Supreme Court of Justice had ruled that individual criminal responsibility must be established in all such cases.

8. **Ms. de la Concha Renero** (Spain) said that the social security deficit and the sustainability of the pension system were priority concerns. Indeed, an extraordinary plenary session of the Congress of Deputies had been convened the previous week to discuss the future of the pension system. Since 1994, all modifications to the pension system had required cross-party agreement, under a parliamentary pact renewed every five

years. The cross-party group was currently discussing social security reforms. A social dialogue round table had also been established, providing a tripartite approach to solving the problem of pensions. Furthermore, all bills would be subject to public consultation, reflecting the important role played by civil society.

9. It would be difficult to comment further on plans to reduce the social security deficit until the Congress of Deputies had completed its deliberations. A State loan was currently being used to cover pension payments until a definitive solution was found. Discussions on the future of the pensions system revolved in part around the funding model, namely whether the system should remain contributory or be financed from tax revenue. Since 2008, social protection had been provided through a contributory system covering pensions and social security benefits and a non-contributory system for pensions and health care; the former was funded through employers' and workers' contributions, and the latter from the State budget. The 2008 economic crisis had not had a significant impact on pensioners, as the State guaranteed a minimum pension for all. Moreover, top-up payments were provided to guarantee a minimum subsistence level.

10. The Government was progressively expanding the scope of its social insurance system, which provided one of the highest levels of protection in the world, with a range of benefits including disability, maternity and paternity allowances. Measures had been taken to extend coverage to vulnerable groups, such as part-time employees, domestic workers and agricultural workers, in order to ensure sufficient levels of social protection. The right to social security was unwaivable and Department of Labour inspectors ensured compliance.

11. On the issue of access to pensions, the reform process launched in 2014 would not take effect until 2025; the long transition period would give people time to adapt to the changes. An online pension calculator tool had been developed to enable workers to estimate their future pension entitlements, thus helping them plan for the future.

12. Spain's ageing population posed a challenge for the social services system. The Government encouraged people to retire later, thereby increasing their pension entitlements. Under the Government's active retirement strategy, introduced in 2013, people who continued to work past the age of retirement could claim half their pension until they stopped working completely, at which point they would start to receive 100 per cent of their pension. Moreover, recently adopted legislation enabled self-employed persons who continued to work past retirement age to claim 100 per cent of their pension.

13. Following the example of other European countries, the Government had ceased to link pensions to the Consumer Price Index and had instead introduced a new index that reflected the economic development of the social security system. A guaranteed minimum annual increase of 0.25 per cent had been established for pensions; although that rate had remained unchanged in recent years owing to the social security deficit, the purchasing power of pensioners had not been affected and it was expected that, once the labour market had revived and the social security system had secured new sources of funding, the annual pension adjustment would be revised.

14. **Ms. Santos Domingo** (Spain) said that the non-contributory pension system, which included retirement and disability pensions, covered more than 450,000 people not entitled to a contributory pension. A minimum pension was guaranteed, and provisions existed for recipients of disability pensions to also receive an income from work performed on a self-employed basis.

15. **Ms. Ruiz Bautista** (Spain) said that measures to combat poverty and exclusion also included a minimum integration income, paid to cover basic needs; spending on such benefits had increased in recent years. Since 2000, the Government had developed plans to foster social inclusion and combat poverty; the latest plan had covered the period 2013–2016. Two of the indicators used to assess poverty and exclusion, namely severe material deprivation and very low work intensity in a household, had improved; the indicator related to the risk of poverty had remained unchanged. While the Government planned to address that problem within the framework of its poverty reduction plans, it should be noted that the share of the total population at risk of poverty or social exclusion (the AROPE index) did not take account of the fact that levels of property ownership in Spain were very high and

that a percentage of the population, in particular older persons, paid rent at significantly below the market rate.

16. It was true that there were significant regional disparities in the poverty rate, which was highest in the Canary Islands, Ceuta and Melilla. However, when comparing the rates across autonomous regions, it must be borne in mind that they were measured against the national income threshold and not against the available income in each region. If the methodology were changed so that the risk of poverty was calculated in relation to the threshold of the individual autonomous community, there would not be such obvious disparities. In terms of addressing the disparities, the Ministry of Health, Social Services and Equality co-financed social services for families and children to combat child poverty, which was of particular concern to the Government. That annual contribution was divided among the autonomous communities on the basis of such criteria as population and surface area, as well as the poverty rate. In recent years, additional annual subsidies of 2 million euros and 11 million euros had been provided to Ceuta and Melilla and the Canary Islands, respectively.

17. The multidimensional nature of poverty and social exclusion was taken into account in developing social policies and inclusion plans for the most disadvantaged groups. An active inclusion strategy was being implemented with a view to improving beneficiaries' employability, offering social protection benefits to those facing the greatest difficulties, and ensuring access to quality education, housing, employment and social services, inter alia. In addition, there were targeted measures and policies for specific groups, such as persons with disabilities and homeless persons.

18. The final evaluation of the National Reform Plan 2016 had been completed and would shortly be published on the Government website, describing in detail the 240 measures for social inclusion included in the Plan and the executed budget, which had been 8 per cent higher than initially planned. In terms of the evolution of social indicators over the duration of the Plan, the AROPE index had fallen by 4.3 per cent, there had been a small reduction in the Gini coefficient that measured inequality, the number of long-term unemployed had fallen by 28 per cent, the school dropout rate had fallen significantly, and life expectancy had increased. Work was now under way on a strategy to prevent and combat poverty, with four targets agreed by the ministries, autonomous communities and social agencies, namely to combat poverty and inequality, especially severe poverty and child poverty, invest in inclusive education and suitable employment, improve social protection and enhance coordination among all stakeholders.

19. **Mr. Vizcarro Germade** (Spain) said that the Government shared the Committee's concerns in relation to access to housing. To that end, both the 2013–2016 housing plan, which had been extended to 2017, and the new plan for 2018–2021 provided for support programmes to develop a stock of public rental housing, which were applied by the autonomous communities if they considered it to be a priority in their territories. It was true that the proportion of social housing for rent in Spain was low, but it must be borne in mind that the overall rental rate was also low compared to other European countries, as the home ownership rate stood at around 80 per cent. The housing policy model had been changed in 2013 in response to the severe economic constraints of the crisis, with resources being concentrated on priority areas, including the rental sector and the renovation of existing housing. There had thus been a significant reduction in financing for land development and support for mortgages. The reduction in development and construction was in any case in line with the urban development plans of the municipalities, which were now focused on sustainability and aimed to avoid the sprawling developments of the past. The provision of direct rental support to those beneficiaries most in need was a more efficient option in economic terms and would likely yield much more rapid results. Although it was true that little social housing had been created between 2013 and 2017, some 400 million euros (€) in rental subsidies had been provided to more than 275,000 beneficiaries during that period. Under the 2018–2021 housing plan, the level of direct rental support had increased from 40 to 50 per cent of rent for young people and persons over the age of 65; there was also special support for victims of eviction, who were entitled to receive up to 80 per cent, and, in exceptional situations, even 100 per cent of the rental amount, up to a maximum of €400.

20. **Ms. Ruiz Bautista** (Spain) said that the Ministry of Health, Social Services and Equality provided services for two of the categories of homeless persons defined in the European Typology on Homelessness and Housing Exclusion (ETHOS), namely persons in situations of rooflessness (without a shelter of any kind) and houselessness (with a temporary place to sleep in institutions or shelters). The Comprehensive National Strategy for Homeless Persons had been adopted in 2015 to provide policy guidance in a single reference document for the autonomous communities and municipalities. According to the findings of a recent survey, the number of centres for homeless persons had increased by 13.6 per cent, and there had also been an increase in public and private spending on services for homeless persons. The Strategy for Homeless Persons had five strands: prevention, awareness-raising, guaranteeing security and quality of life, promotion of services and exchange of information between public and private entities. The Government had provided €13 million in funding in 2016 to agencies working with homeless persons, to implement the innovative "Housing First" approach and support social inclusion for homeless persons. Work was under way between the Government and the voluntary sector to develop a common methodology to identify the number of homeless persons and define how best to meet their needs. There would be a midterm evaluation of the Strategy in 2019, by which time it was hoped that significant progress would have been made in reducing the number of homeless persons in Spain.

21. **Ms. González del Yerro** (Spain) said that the objective of Royal Decree-Law No. 16/2012 had been to increase the efficiency of the Spanish health system in order to guarantee its sustainability, and not to expand health-care coverage. A repeal of the Decree-Law would be problematic, as it would involve a return to the unsustainable situation that had led to the enactment of the instrument in the first place. Indeed, the Decree-Law had been adopted in order to combat the serious problem of health tourism, whereby citizens of other European Union Member States who had not been entitled to free health care in their own countries had moved to Spain, where it had been possible for them to easily obtain a Spanish health-care card, on the basis of which they could obtain a European health insurance card and return to their country of origin, having acquired full rights paid for by Spain. The Royal Decree-Law had thus not been intended to target disadvantaged migrants in an irregular situation, but persons who travelled to Spain specifically to take advantage of its free health care.

22. **Mr. Parra** (Spain) said that, in its judgment on the compatibility of Royal Decree-Law No. 16/2012 with all the international treaties to which Spain was a party, including the Covenant, the Constitutional Court had recalled that, under article 2 (1) of the Covenant, each State Party to the Covenant undertook to take steps, individually and through international assistance and cooperation, to the maximum of its available resources, which meant that the realization of the right to health and the other rights covered by the Covenant was subordinate to the availability of resources. The Constitutional Court had noted that article 12 (1) of the Covenant referred to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health but did not specify that the provision of services for the realization of that right must always be free of charge.

23. **Ms. Liebenberg**, recalling the Committee's general comment No. 4 on the right to adequate housing, expressed concern that, according to recent statistics, personal expenditure on housing had increased by the largest percentage in the European Union and that average rental prices had risen by 4.3 per cent in Barcelona and 3.8 per cent in Madrid. She would be interested to hear what measures the Government was taking to regulate the private housing market, for example in areas such as mortgage bond foreclosures, private rental contracts and security of tenure. She wished to know whether the courts considered the reasonableness and proportionality of evictions, whether there were due process safeguards, and whether it was a requirement that alternative accommodation must be provided if the persons concerned would be left homeless as a result of an eviction.

24. **Mr. De Schutter**, noting that the State party's National Action Plan on Business and Human Rights had been adopted just weeks after general comment No. 24 on State obligations in the context of business activities, said that the delegation might comment on whether there were any plans to update the Action Plan in the light of the Committee's guidance. In particular, two major lacunae should be addressed. First, the fact that Spanish

parent companies were not required to impose due diligence obligations on their foreign subsidiaries meant that foreign victims of human rights abuses committed by such subsidiaries outside the Spanish territory might have no access to remedies before Spanish courts. Secondly, since the possibility of imposing extraterritorial criminal jurisdiction had been restricted, victims must be Spanish or residing in Spain, and companies could only be prosecuted if domiciled in Spain, which meant there was no liability before Spanish courts for foreign subsidiaries of Spanish companies.

25. **Mr. Sadi** said that he would welcome information on how royal decrees came into being and on whether there was a system for the uniform application of social security standards across different autonomous regions.

26. **Mr. Kedzia** (Country Task Force) said that he would welcome clarification of whether Spanish law contained any provisions that could be qualified as "anti-strikebreaking", and whether the State party had any intention of reviewing article 315 (3) of the Criminal Code, which provided for penalties for coercion with regard to strike action. He would also like to know whether trade unions had been able to participate effectively in the process leading up to the solutions concerning the sustainability of the pension system, and whether there was a firm framework establishing the rights of social partners to participate in decision-making.

27. **Mr. Abdel-Moneim** said that, to use the language of economics, it seemed from paragraphs 22 to 64 of the State party's report that labour was paying the price for the mistakes of capital and enterprise. Referring to paragraph 38, he said that economic pressures other than employment might have been responsible for the deficits on the current account balance and devaluation of the exchange rate in the past. A similar conceptual approach was apparent in the reference to the econometric study that had identified a rise in wages as the main cause of increased unemployment between 2008 and 2010. In his view, such a view of employment was risky and could result in a failure to realize article 11 of the Covenant. Now that Spain had emerged from the crisis, it was time to review the economic decisions that had been taken at that time and ensure that full employment was always a key objective.

28. **Mr. Uprimny** (Country Rapporteur) said that he wished to know, given the high number of evictions per year, what legal and institutional measures had been adopted to ensure that the Committee's views under the Optional Protocol in relation to specific cases were implemented, including the correction of the legal and institutional weaknesses identified by the Committee. As little improvement had been seen in the rate of poverty and inequality, he asked what was being done to ensure that the benefits of the fiscal system were distributed more fairly.

29. With regard to sexual and reproductive health care, he asked how the State party ensured that women's right to health was not compromised by regional differences in access to reproductive services, the practice of conscientious objection to abortion among medical professionals, and the legal obligation on persons aged between 16 and 18 years to obtain the consent of their legal representative before being granted an abortion.

30. He also noted that the ruling issued by the court in respect of Royal Decree-Law No. 16/2012 on the reform of the health-care system was regressive and did not take account of the Committee's jurisprudence.

31. **Mr. González-Aller Jurado** (Spain) said that a royal decree was a legislative measure adopted by the executive authorities and had the same status as other laws. Royal decrees were drawn up by the Council of State and approved by the Council of Ministers.

32. **Ms. Blázquez Martín** (Spain) said that the term *lanzamiento*, as opposed to *desahucio*, (both commonly translated as "eviction") referred to the transfer of possession of a building to the legal owner. It did not, therefore, necessarily imply the forced eviction of persons from their accommodation, as it also covered situations such as the changing of locks on abandoned properties. The Government was concerned by the high number of evictions, but it also wished to place the statistics in context. In 2016, in 57 per cent of cases, persons to whom an eviction notice had been served had complied with the notice voluntarily or had reached an agreement on how to proceed with the eviction. In 2015, only

32 per cent of foreclosures had resulted in a *lanzamiento*. All evictions were carried out in concordance with the Covenant and with the principles of reasonableness and proportionality, which were protected by law; the persons affected had the right to oppose an eviction notice, and the courts took into account the rights of tenants, and of families and minors, when deciding the details of the eviction. Social services were also involved in providing alternative housing and supporting the transition of evicted persons to such housing.

33. The Urban Rental Act had been amended in 2013, reducing the minimum rental term from five to three years, in an effort to revive the rental market. The law could not keep pace with the speed of change in the housing market, however. The minimum term was therefore open to further review.

34. **Ms. García Gasalla** (Spain) said that the Government had adopted the National Action Plan on Business and Human Rights in 2017 as a first step towards addressing the matter. A commission had been established to monitor the implementation of the plan, provide periodic updates, identify the organizations responsible for implementing each of the measures, and set indicators to measure progress. The plan would include measures to raise awareness in companies of their human rights obligations, examine discriminatory practices and introduce a system of incentives. A working group would be established to assess whether government policies to promote the involvement of businesses in international markets were in concordance with the guiding principles of the plan. The monitoring committee was also due to produce a report on legal mechanisms for holding businesses to account. Spain had various legislative and extrajudicial measures for ensuring that companies met their human rights responsibilities.

35. **Mr. Valverde Álvarez** (Spain) said that chambers of commerce played a role in ensuring that companies operating abroad met their human rights obligations, including by raising awareness of corporate social responsibility. Numerous agreements on the matter had been reached between Spanish chambers of commerce abroad. In addition, where public institutions received government financing or insurance for export activities, efforts were made to ensure that they complied with the State party's international human rights obligations throughout the project.

36. **Ms. Ángeles Villegas** (Spain) said that, although the adoption of a compliance system was not obligatory in certain sectors, almost all companies adopted such a system to ensure that they were not held criminally responsible for the actions of their representatives.

37. When introducing provisions on the responsibility of legal persons, the legislature had opted to create a closed list of offences, which meant that legal persons could be prosecuted only for offences covered by the Criminal Code. The extraterritorial application of the law was further restricted, as it applied only to certain offences and to companies domiciled in Spain.

38. Debate was ongoing regarding the responsibility of parent companies for offences committed by subsidiaries. The concept of objective criminal responsibility of legal persons did not currently exist under Spanish law, which meant that the parent company itself needed to have committed an offence before it could be held responsible. As the concept of criminal responsibility of legal persons had not long been included in Spanish law, the legislature was not yet in a position to make decisions on the matter.

39. **Mr. Parra** (Spain) said that the Ministry of Justice was examining the views adopted by the Committee under the Optional Protocol with regard to communication No. 5/2015. It was currently working to determine the legal costs incurred by the complainant, which was the main point of contention. In response to the complaint regarding the legislative system of notifications by edict, the Civil Procedure Act had been amended in line with the Committee's recommendations.

40. **Ms. Blázquez Martín** (Spain) said that the views of the Committee on the two cases had contributed greatly to establishing the jurisprudence that served as a regulatory guarantee in eviction cases.

41. **Ms. Crăciunean-Tatu** (Country Task Force) said that, as gender inequality had increased as a result of austerity measures, she wished to know how the Government

reconciled the application of such measures with the need to attain gender equality, what was being done to ensure that women were not affected disproportionately by austerity measures, and whether it intended to improve the efficacy of awareness-raising campaigns and introduce an education-based plan to combat gender stereotypes.

42. Given that the school dropout rate remained high in Spain, particularly among Roma children, she asked what was being done to address the social factors that encouraged school dropout, in particular among vulnerable groups, and whether the higher dropout rate among male students was related to the focus placed in social policies on men as primary wage earners. She wished to know what was being done to address the segregation of Roma and migrant students in education, including within schools; to provide education on Roma culture and its essential contributions to Spanish culture; and to ensure that educational curricula reflected the fact that Spain had become a country of immigration. She also asked how the Government reconciled those educational needs with the decision to make primary-level education on citizenship and human rights and secondary-level education on civics and ethics non-compulsory.

43. She asked what measures had been taken to ensure affordable access to the benefits of scientific progress, including access to the Internet, in particular for disadvantaged and marginalized groups. Given the reduction in spending on culture during the economic crisis, she also wished to know what steps the Government was taking to ensure access to culture and whether it could provide updated statistics.

44. **Ms. Rodríguez Alba** (Spain) said that, while all companies were obliged to implement measures to promote gender equality in the workplace, equality plans were mandatory only for those that employed more than 250 people and/or those that were covered by collective bargaining agreements. Companies not falling into either of those categories were free to adopt an equality plan on a voluntary basis. While no data was available on the number of equality plans in place in businesses across the country, the authorities were moving towards implementing compulsory registration of all equality plans — whether adopted on a mandatory or voluntary basis — so as to increase the visibility of such plans and make it possible to gather statistical information on them.

45. In the area of flexible working, Spain had one of the most advanced legal frameworks in Europe with regard to the right to give up work to look after one's family. Measures were also in place to support those people who chose to keep working after they became parents, such as the possibility of adjusting working hours to fit with the family's needs and the increase in the length of paternity leave, which was non-transferable and paid in full. Efforts were being made to include clauses on flexible working and teleworking in collective bargaining agreements.

46. **Ms. Aragonés Pomares** (Spain) said that the Institute for Women and Equal Opportunities had produced an initial draft of the Strategic Plan on Equal Opportunity for the period 2018–2021. A wide range of stakeholders, including associations representing rural and Roma women, civil society organizations and the country's two largest trade unions, were being consulted on the text. The Plan was intended to address a number of key areas, including the eradication of all forms of gender-based violence, the empowerment of women in the economic and political spheres, and sexism in the media and advertising. It was hoped that the Plan would be adopted during the second half of 2018.

47. The Institute for Women and Equal Opportunities was working closely with the Department of Education to combat gender stereotypes in school textbooks and university teaching programmes. Over the previous year, the Government had been carrying out a project to promote the use of anonymized curricula vitae in order to tackle discrimination against women, particularly those groups who faced multiple forms of discrimination, such as women with disabilities. Other initiatives included empowerment and leadership training, to encourage more women to take up positions on decision-making bodies in the agricultural and fisheries sectors. The Institute provided annual subsidies to small and medium-sized enterprises; in 2017, it had paid out a total of €1.25 million to 218 companies. In addition, 142 businesses had been awarded a quality mark for their efforts in the area of equality. In November 2017, cross-party support had been achieved on reforms to legislation on gender-based violence, trafficking and support for victims of sexual violence.

48. **Mr. Ferrán Priestley** (Spain) said that the principles of gender equality and equality of opportunity were recognized in the Constitution and other key legal instruments. The Ministry of Education had developed a strategic plan that included measures to prevent gender-based violence in schools and ensure that educational establishments were safe places for all.

49. The school dropout rate had dropped by 12 percentage points over the previous 10 years, and the Government estimated that it was on track to meet the objective set by the European Union to reduce the rate to 15 per cent by 2020. Initiatives were in place to help children stay in school and provide them with guidance and support.

50. Other programmes being implemented in schools were aimed at ensuring the inclusion of children with special educational needs and promoting the acquisition of reading skills.

51. **Ms. Ruiz Bautista** (Spain) said that, as children generally attended the school closest to their home, schools in areas with a large Roma population would naturally have a higher concentration of Roma students. The State Council of the Roma People had a number of working groups, one of which focused on the area of education. While the dropout rate remained higher among Roma students, especially girls, than in other population groups, there had been an improvement in the enrolment rate of Roma at the secondary level. Approximately €6 million in funding had been received from the European Social Fund and other sources for the Promociona programme, an initiative that supported children as they made the transition from primary to secondary school. In some parts of the country, teaching materials had been developed to promote Roma culture and history. The Roma Cultural Institute also worked to promote Roma culture.

52. **Mr. Valverde Álvarez** (Spain) said that the Spanish Foundation for Science and Technology ran outreach projects designed to increase interest in scientific subjects, including through photography exhibitions and events to raise public awareness of notable scientists. Summer school programmes were available to help provide children with opportunities to explore science and technology. In addition, science and computer programming workshops were run with the aim of overcoming the gender gap in those fields. The Government provided annual subsidies totalling €3.25 million for activities intended to promote science, technology and innovation.

53. **Ms. Torre Villaverde** (Spain) said that the Ministry of Culture collected a wide range of statistical information, all of which was publicly available on the Internet. In 2015, public spending at the local, regional and national levels had amounted to more than €4 billion — an average of €102 per capita nationally — with the largest amount of money coming from local administrations. While spending on culture had been affected by the economic crisis, the reductions that had been seen previously had begun to be reversed. The Ministry had put together a programme of cultural events and performances that local administrations could access at reduced rates, thereby making quality content available to a wider audience. The Roma Cultural Institute awarded a number of cultural prizes and had established a library of Roma cultural works at the University of Alcalá. A cross-cutting initiative was in place across a number of ministries with the aim of extending broadband coverage to the whole population. Households tended to spend more on television and the Internet than on other means of consuming culture.

54. **Mr. Uprimny** said that he would be interested to learn how the elimination of mandatory sex education aligned with the principle of comprehensive education for all and with the enjoyment of sexual and reproductive rights.

55. **Mr. González-Aller Jurado** (Spain) said that a response to that question would be provided in writing. All the questions raised by members of the Committee had been important and relevant, enabling the State party to advance and consolidate economic, social and cultural rights.

56. **Mr. Uprimny** said that the dialogue had been sincere, direct and respectful. The Committee's concluding observations and recommendations would help to improve the enjoyment of those rights in Spain.

The meeting rose at 1 p.m.

United Nations E/C.12/2018/SR.18

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Committee on Economic, Social and Cultural Rights

Sixty-third session

Summary record of the 18th meeting

Held at the Palais Wilson, Geneva, on Thursday, 22 March 2018, at 3 p.m.

Chair: Mr. Kedzia (Vice-Chair)

Contents

Consideration of reports (*continued*)

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Fourth periodic report of New Zealand

This record is subject to correction. Corrections should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of the present record to the Documents Management Section (DMS-DCM@un.org).

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The meeting was called to order at 3 p.m.

Consideration of reports (*continued*)

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Fourth periodic report of New Zealand (E/C.12/NZL/4 and E/C.12/NZL/QPR/4)

1. *At the invitation of the Chair, the delegation of New Zealand took places at the Committee table.*

2. **Mr. Little** (New Zealand), introducing his country's fourth periodic report (E/C.12/NZL/4), said that New Zealand was a diverse, multicultural Pacific nation that prided itself on promoting human rights and the equal treatment of all citizens. The relationship between the Government and Māori, the indigenous people of New Zealand, was a significant aspect of the nation's identity. The nation's founding document, the Treaty of Waitangi, signed in 1840, formed the basis of that relationship.

3. The Government was strongly committed to bringing about a significant and sustained reduction in child poverty. Under the Child Poverty Reduction Bill, steps would be taken to reduce child poverty and improve the well-being of the youngest citizens. Currently, between 150,000 and 210,000 children were living in poverty or hardship, with around 64,000 living in severe hardship. Plans were in place to establish robust measures to tackle child poverty and to require future governments to set targets relating to those measures. Every year, the Government would be required to report on progress against those targets and indicate how new spending initiatives would reduce child poverty.

4. In accordance with an ambitious plan to address the acute housing shortage in New Zealand, the Government had committed itself to building 100,000 new homes over 10 years, some 40 per cent of which would be affordable homes or social and emergency housing. In view of the fact that home ownership rates had fallen significantly since 1991, steps would be taken to protect the rights of tenants. Under new legislation on minimum housing standards, landlords would be required to ensure that rental properties were warm and dry so that the health risks associated with poor quality housing would be minimized.

5. In respect of further education, measures had been adopted so that, from the start of 2018, no fees would be payable for the first year of full-time courses at the tertiary level or the first two years of apprenticeships. From 2024, no fees would be payable for the first three years of study.

6. The Government was committed to building a high performing economy that delivered good jobs, decent working conditions and fair wages. A number of amendments had been made to employment legislation to enhance the protection afforded to workers, especially vulnerable workers. A second round of amendments would strengthen the role of collective bargaining in the workplace to ensure fair wages and conditions. A significant level of public funds would be invested in regional economies to promote job creation and private investment. Plans were in place to develop an employment programme aimed at young people in deprived areas.

7. The Government had committed itself to establishing a Royal Commission of Inquiry into the historical abuse of children and adults in State care. In accordance with the Commission's draft terms of reference, the inquiry would consider all forms of abuse experienced by children, young persons and adults in situations where the State was responsible for their care. The Royal Commission would undertake an independent public consultation in accordance with the draft terms of reference and then begin its substantive investigations.

8. **Ms. Bras Gomes** (Country Rapporteur), noting that the Covenant was not recognized or endorsed within the legal framework of the State party, said that draft legislation did not appear to be subject to sufficient scrutiny to ensure that it complied with international human rights obligations. She would be interested to hear how disclosure statements worked in practice, how many such statements had concerned Covenant rights and what rights those statements had addressed.

9. Given that the Bill of Rights was not comprehensive, which, in turn, meant that the Public Finance Act did not provide for the progressive realization of economic, social and cultural rights and the State party could not measure the achievement or otherwise of the Sustainable Development Goals, she asked whether the Government intended to incorporate economic, social and cultural rights into the Bill of Rights, to amend the Public Finance Act to take those rights into account and to develop a coherent strategy to ensure the realization of the Sustainable Development Goals.

10. Noting that the Government had failed to provide an adequate response to the recommendations made by the independent Constitutional Advisory Panel in relation to the strengthening of the Treaty of Waitangi within the State party's constitutional framework, she asked whether it would consider implementing a national strategy or action plan to bring its policy and legislation into line with the recommendations of the Advisory Panel and the United Nations Declaration on the Rights of the Indigenous Peoples and provide a formal and comprehensive response to the recommendations set out in the Waitangi Tribunal's landmark report.

11. She asked whether the State party's trade strategy complied with the recommendations made by the Waitangi Tribunal on ways of establishing meaningful engagement with Māori in relation to decisions concerning their lands, territories, waters and maritime areas. Noting that the Government did not always respect Māori claims to be the original owners of their lands, she asked for information on measures taken to ensure that the principle of free, prior and informed consent was implemented in a way that would be recognized by the indigenous peoples.

12. The Committee would welcome further information on measures taken to ensure that the United Nations Guiding Principles on Business and Human Rights were implemented in government procurement practices. She asked how effective the national contact point established under the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises had been and whether consideration was given to extraterritorial obligations in the area of business and human rights.

13. Noting that levels of domestic violence in the State party were among the highest in the world, she asked whether the Government would consider implementing a long-term, coherent and cross-cutting strategy aimed at preventing domestic violence and protecting and rehabilitating victims. It would also be interesting to learn what measures were being taken to investigate the abuse of children in State care, the majority of whom were Māori children or children with disabilities.

14. The Committee would welcome the delegation's comments on the view that discrimination could be defined as a pattern of behaviour that disadvantaged Māori while benefiting others and that prejudice directed at Māori currently stemmed more from unconscious bias than from institutional racism.

15. Lastly, she asked what steps were being taken to increase the number of women in senior roles in private companies and on the boards of such companies.

The meeting was suspended at 3.35 p.m. and resumed at 3.45 p.m.

16. **Mr. Little** (New Zealand) said that the Government had no plans to change the substantive rights enshrined in the New Zealand Bill of Rights Act. When new legislation was being considered, disclosure statements and certificates were issued that indicated whether or not that legislation was consistent with the Bill of Rights and the Government's international obligations. Such statements and certificates were issued at the outset of a bill's journey through the legislative process so that, by the time it was subjected to detailed examination, the members of Parliament responsible for examining it were well aware of any possible inconsistencies that it might contain.

17. Plans were in place to empower the courts to declare legislation to be inconsistent with the Bill of Rights and to require Parliament to respond to any such declaration of inconsistency by either endorsing the legislation as it stood, considering amendments to it or repealing it. Legislation entering Parliament for the first time was often accompanied by comments relating to specific international obligations that the Government had assumed,

including the Covenant. The Government had undertaken to ensure that its economic policies were consistent with a well-being framework that the Treasury and other agencies were in the process of developing.

18. Cross-government efforts would need to be made in order for the Sustainable Development Goals to be achieved. To that end, an inter-agency process had been initiated to consider how the Goals applied to New Zealand and how they could be achieved.

19. In considering any possible constitutional reform involving the Treaty of Waitangi, it was necessary to bear in mind that, in the view of many Māori leaders, the value of the Treaty lay in the fact that it had arisen from the direct historical relationship established between the Crown and the Māori. Great importance was attached to the fact that the Treaty had been established with the Crown and not with any particular government.

20. Steps were being taken to ensure that the Government could fulfil its obligations under the United Nations Declaration on the Rights of Indigenous Peoples. In that regard, the Government had appointed a Minister of Crown/Māori Relations who was consulting with both Māori and Pākehā — New Zealanders of European descent — on ways of ensuring that State decision-making took the views of all citizens into account.

21. The Government was confident that the rights of Māori established under the Treaty of Waitangi were sufficiently protected under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. When the Government entered into trade agreements, it undertook consultations with relevant stakeholders, including those representing the interests of Māori. In addition, all trade agreements were subjected to parliamentary scrutiny, including a select-committee process through which members of the public and organizations could submit their views on the prospective agreement.

22. The area of land known as the Pekapeka Block had been the subject of negotiations over a possible settlement in favour of the *iwi* (tribal group) that had claims to it. The land had been offered to the *iwi* but, during the course of the negotiations, they had decided to accept financial compensation rather than take ownership of it. Plans were currently in place to enable residents to purchase leasehold land within the Block and to allocate the proceeds to measures intended to protect the land rights of the tribal group in question. The Waitara Lands Bill, which concerned the Pekapeka Block, had not completed its passage through Parliament because the Government and the local councils involved had stipulated that the legislation could not proceed unless all relevant stakeholders were satisfied with it.

23. The Government was working with the private sector to raise awareness of the fact that some suppliers engaged in labour exploitation or slave labour. By 2015, the national contact point established in the context of the OECD Guidelines for Multinational Enterprises had received 11 referrals in respect of human rights abuses.

24. The Government had appointed an undersecretary responsible for tackling family and domestic violence who was putting together a coherent and coordinated plan to address that issue. A cross-cutting strategy was also being developed. All the political parties represented in Parliament were committed to reducing domestic violence. The Government was working on a cross-party basis to ensure that any solutions adopted in that regard would remain in place across changes of government. The abuse of children in State care was being addressed by an inquiry set up to be as comprehensive as possible.

25. Regarding institutional racism, the Government planned to take steps to address the overrepresentation of Māori in the corrections system and was implementing measures to improve educational achievement among Māori and Pasifika students, ensuring that all young people had the opportunity to be taught in a way that was relevant to them and that allowed them to succeed.

26. The Government was working with civil society organizations to develop programmes to encourage the appointment of women to company boards and it aimed to set an example for the private sector in that regard. About 38 per cent of parliamentarians and a similar proportion of Cabinet ministers were women.

27. **Ms. Shin** (Country Task Force) said that the Committee had received information that the national contact point for the OECD Guidelines for Multinational Enterprises was

just one person. Did the Government plan to strengthen that system and to improve the dissemination of information related to complaints?

28. Recalling that New Zealand had a proud history as a pioneer of women's rights, having been the first country to grant all adult women the vote, she said that the Government should do more than merely set an example to the private sector. For instance, would it be willing to adopt special measures or legislation requiring that company boards should have a quota for women? In the same vein, she was concerned that there was an unconscious bias against women that led to a "motherhood penalty", whereby women were paid less because they had interrupted their careers to have children. How did the Government plan to increase the social recognition of women's role in development and promote the need for shared responsibility between men and women?

29. **Mr. Sadi** (Country Task Force) said that, while he was impressed by the high level of gender parity in Parliament, he wished to know how many members of Parliament were from Māori and Pasifika communities. What measures were being taken to combat unconscious bias, which seemed to be deep-rooted in New Zealand society?

30. **Ms. Liebenberg** said that the Subcommittee on Accreditation of the Global Alliance of National Human Rights Institutions had recommended that the State party's Human Rights Commission should have an open, publicized written procedure for the selection of commissioners. She would be grateful if the delegation could explain the current procedure and indicate whether the Government planned to take steps in line with that recommendation. Given that climate change would have a severe impact on economic, social and cultural rights and would affect vulnerable populations disproportionately, she would also be interested to hear what participation mechanisms the State had established with Māori in relation to climate change adaptation and mitigation strategies.

31. **Mr. Kerdoun** (Country Task Force) said that, although women's representation was important, the figures provided by the State party referred to parity — which could be achieved by requiring public institutions and political parties to appoint more women — rather than equality. He was interested to know how the Government guaranteed equality in the law, so that women had equal rights and equal pay. He would be grateful for information on the proportion of Māori employed in public institutions and companies.

32. **Mr. Chen** said that he was concerned that the Bill of Rights Act and the Human Rights Act did not confer equal importance upon economic, social and cultural rights, on the one hand, and civil and political rights, on the other. Did the Government have a national action plan, in keeping with the recommendations of the Vienna Declaration and Programme of Action, to ensure that it gave more equal attention to the two sets of rights?

33. **Ms. Ohia** (New Zealand) said that the national contact point for the OECD Guidelines was located within the Ministry of Business, Innovation and Employment. A mechanism had been established for the treatment of complaints referred to it, whereby the Ministry was required to investigate claims, identify substantive issues and, if necessary, facilitate dialogue and seek resolution through mediation. The national contact point did not determine whether breaches of the Guidelines had occurred, nor did it adjudicate disputes; however, in the interest of transparency, it issued final statements on the outcomes of complaints, which were reported annually to the OECD Investment Committee. While the number of complaints had increased in recent years, not all of them met the eligibility criteria for referral to the mechanism. The Ministry would keep the resourcing of the national contact point under consideration and would allocate additional resources as required.

34. **Mr. Little** (New Zealand) said that the Government was aware that women who interrupted their careers to start a family were at a disadvantage and it was working with the private sector to develop solutions to the problem. The Parental Leave and Employment Protection Act contained provisions on keeping employees' positions open during periods of parental leave.

35. The number of Māori in Parliament and in the Cabinet had increased significantly at the previous general election, with the result that 29 out of 120 seats in Parliament were now held by Māori representatives. To address unconscious bias, the Government funded

Māori television and radio broadcasters and implemented an active programme to sustain the Māori language and support festivals and celebrations of Māori culture. Many private organizations incorporated Māori cultural elements into their business practices.

36. The process of appointing commissioners to the Human Rights Commission, although not subject to statutory provision, was open and transparent: positions were advertised, the candidates were considered and a recommendation was made to the Minister of Justice, who in turn made a recommendation to the Governor-General. There were clear and narrow grounds for the removal of commissioners, who were rarely removed before the expiry of their term. Commissioners were fully independent and were duty-bound to act impartially in respect of any measures proposed by the Government.

37. The newly elected administration was keenly focused on climate change mitigation and adaptation strategies; it had appointed a Minister for Climate Change and was considering the establishment of a climate change commission to provide independent policy advice to help New Zealand achieve its goals under the Paris Agreement. Mindful that many neighbouring countries were small island developing States and highly vulnerable to climate change, the Government was working with those countries to develop their capacity to respond. New Zealand already hosted large communities of Pacific islanders and the Government recognized that it might, in the future, have to consider taking in climate-change refugees from the Pacific.

38. Concerning the legal framework for women's equality, although the Government had not passed any legislation on gender ratios for company boards, there were other legislative provisions designed to improve women's labour participation, including on pay equity. The first case brought in the 40 years since the adoption of equal pay legislation had recently reached the courts, with the result that the Government had agreed to a 2 billion New Zealand dollars ($NZ) settlement, meaning that aged and residential care workers, many of whom were women, would receive a rate of pay comparable to other workers with similar skills. The Government would continue to strive to increase women's representation in public-sector employment and would encourage the private sector to follow suit.

39. New Zealand had a human rights national plan of action, developed by the Human Rights Commission, consisting in an online tool that allowed the public to monitor progress against the recommendations received and accepted during the universal periodic review. The website hosting the tool had received 16,000 hits in 2017.

40. **Mr. Kerdoun**, noting that the New Zealand education system was considered to be one of the best in the world and that Māori could be educated in their own language at preschool and in primary school, said that the Committee had nevertheless received reports that only 4 per cent of teachers were capable of teaching in Māori, which severely limited access to education in the language. Furthermore, Māori students remained significantly less likely than New Zealanders of European descent to obtain secondary education certificates. Accordingly, he wished to know how the Government intended to ensure access to education in the Māori language and to close the gap in educational achievement. Were school programmes developed in consultation with Māori and adapted to their culture and needs? He would be grateful for information on the Education Act 1989, in particular as to whether it was outdated, and on any planned or existing Government policies for the realization of the economic, social and cultural rights of marginalized and disadvantaged individuals and groups.

41. The Committee was concerned at reports that a large number of children with special needs, including children with disabilities, seemed to be excluded from the school system; it would therefore welcome clarification on the situation and the steps that were envisaged to prevent the exclusion of children with special needs. The Committee had also been informed that about 20 per cent of young people left school with low levels of education. Was that figure correct and how might the problem be remedied? The delegation might also provide information on the Government's response to physical and psychological bullying in schools, including bullying via social media. Was it true that New Zealand had a law that allowed children to leave school in order to enter employment, and if so, what was the legal minimum age for them to do so?

42. In respect of migrants and refugees, he understood that Australia and New Zealand had a high standard of living that attracted people from overseas; in that context, he wondered whether there was any truth to reports of foreigners entering New Zealand on tourist visas for the purpose of enrolling their children in school. The Committee would also appreciate clarification of whether children residing illegally in the country had the right to free education. If not, what course of action did the State party pursue when the family was unable to afford the school fees?

43. **Mr. Little** (New Zealand) said that the lack of teachers fluent in the Māori language meant that it would be some time before Māori became available to all students in the school system, as the Government intended. Teacher recruitment and retention was a problem in a number of disciplines and was not confined to the teaching of, or teaching in, Māori. Scholarships had been introduced to encourage Māori speakers to enter the teaching profession. With regard to the gap in educational achievement, the Ministry of Education implemented various programmes to promote excellence and to foster relationships with *iwi*, while the Māori Education Strategy Ka Hikitia recognized Māori aspirations and the importance of Māori identity as the basis for learning and for achieving success. The Education Act 1989 had been frequently amended and updated so that it was now very different to the Act as originally adopted. The Government had recently announced a review of all levels of education and of educational standards to ensure that the system was fit for the twenty-first century.

44. The new administration had committed itself to retaining residential special education facilities for children with the greatest need, thereby averting the threat of closure that such facilities had been under. The Government accepted the need to improve its record on special education and planned to examine the requirements of special needs students in the framework of its ongoing education review.

45. The Government acknowledged that 20 per cent of students left school without a qualification and was determined to reduce that number. Moreover, it recognized that functionally illiterate and innumerate school leavers were at greater risk of coming into conflict with the criminal justice system: educational achievement for all students was therefore the best outcome for the whole of society. The minimum age at which children were permitted to leave school to enter employment was 16 years, although some school-age children engaged in work outside of school hours, presenting the challenge of ensuring that work did not compromise their educational achievement.

46. As in many countries, bullying and online bullying was a concern and criminal laws were in place to deal with inappropriate conduct online and on social media. The Ministry of Education had adopted programmes aimed at creating a culture in which bullying was not tolerated and worked with schools to implement restorative justice measures with the participation of perpetrators and victims.

47. The Government encouraged young people from overseas to study in New Zealand and took steps to ensure that they were not subjected to exploitation. All school-age children in New Zealand were legally required to be in school, regardless of their parents' or guardians' immigration status. Despite the statutory commitment to free education, some State schools levied charges on non-resident students; however, the Government was considering the introduction of a scheme to top up the funding of State schools so that they would not have to charge such fees. The Government's refugee integration process aimed to ensure that children attended school and received assistance with language learning, which in turn helped their parents to learn the language and become fully integrated into society.

48. **Mr. Kerdoun** said that he wished to know whether there was any de facto segregation in schools between Māori and New Zealanders of European descent, given that many Māori lived in separate communities. He would appreciate information on any measures taken to avoid segregation, which could have harmful consequences for society as a whole. Regarding higher education, he asked whether it was true that over 40 per cent of students did not complete their first degree, and requested further information on the subject. He would also appreciate statistics on the school dropout rate, which appeared to

be high, and asked whether the rate indicated problems in the education system. He wished to know what the Government's future priorities were for education.

49. **Mr. Sadi** said that he would like to know whether science and other subjects were taught in the Māori language. Noting that there was a significant housing shortage in New Zealand, he asked whether there was a link between housing issues and the high rate of school dropouts.

50. **Ms. Bras Gomes** said that she would like to hear what the impact of the Māori Education Strategy Ka Hikitia had been. She asked how the Government was intending to amend its current strategy to close the achievement gap between Māori pupils and those of other ethnicities. She also wished to know how many Māori families received government subsidies for early childhood education, and whether access to that education had made primary education easier for Māori children.

51. Regarding inclusive education, she asked how the Government addressed the discrepancy between the Education Act, which provided for free, universal primary education, and the Human Rights Act, which stipulated that persons with disabilities could be denied access to educational establishments when a special service or facility was required and could not reasonably be made available, and when there was a risk of harm to the person with disabilities or others.

52. **Mr. Little** (New Zealand) said that, although there was a higher than average number of Māori pupils in some urban schools, the education system could not be described as segregated. In general, Māori children were well integrated. Schools in provincial areas tended to reflect the local population, and the risk of either informal or self-imposed segregation was very low. Schools in Auckland, in particular, often had pupils from a wide range of ethnic backgrounds.

53. The Government's future priorities in education would be determined by the outcome of a review of the National Standards system, which measured school performance. It was necessary to have a system that informed parents of their child's progress and ensured that children's education was tailored to their progress. As to whether 40 per cent of students did not complete their first degree, the claim would be checked and the correct figure communicated to the Committee later. It was true that housing insecurity affected the school dropout rate, as some children were forced to change schools several times a year and were therefore often ill prepared for their academic commitments. In some schools, the pupil turnover rate could reach 40 per cent in a single year. The Government's priority was to address the housing crisis in order to provide families with stability and security.

54. To improve educational achievement and accelerate the reduction in the achievement gap, the socioeconomic circumstances of Māori had to be addressed, including the continuing impact of colonization and historical abuses of Māori. The Treaty settlement process was vital in that regard. The rate of Māori children in early childhood education was 95.2 per cent, which was 5.6 per cent higher than in 2010. The Māori language could be and was used to teach all subjects, including science, by teachers able to speak it fluently. The achievement of children learning in Māori-language schools was on a par with pupils throughout the school system, although further work was needed to improve attainment.

55. Regarding the conflicting provisions of the Education Act and the Human Rights Act, the Government was committed to providing education for all school-age children and recognized that the needs of children with disabilities had not always been met. It aimed to ensure that the education system was accessible to all.

The meeting was suspended at 5.30 p.m. and resumed at 5.40 p.m.

56. **Ms. Shin** said that it appeared that women, Māori, Pasifika, young people and persons with disabilities were more likely than others to experience unemployment or underemployment, and the possibility of intersectional discrimination among those groups remained a concern. She would appreciate further information on the new Government's measures to improve employment, particularly among those groups, and on how the Government would ensure the success of those measures.

57. As the country had ratified the Convention on the Rights of Persons with Disabilities, she wished to know whether reasonable accommodation was included in legislation relating to persons with disabilities, as it did not appear in the national definition of discrimination. Did the Government use the social model or the medical model to identify disabilities, were persons with disabilities able to access all of the services they needed, including transportation, and did the Government plan to begin collecting regular data on the employment of persons with disabilities?

58. Regarding just and favourable conditions of work, she wished to know how the implementation of new initiatives prohibiting abusive business practices was ensured and monitored. She asked whether the new Government planned to repeal minimum wage exemption permits for persons with disabilities and, if so, how businesses would be encouraged to employ persons with disabilities. Were there any existing subsidies or incentives in that regard?

59. Noting that a number of people had been killed or injured in the workplace in recent years, largely in sectors such as agriculture, fishing and construction, in which many Māori and Pasifika were employed, she asked whether the new Government was planning to introduce measures to address workplace safety. She also wished to hear how it planned to reduce or eliminate gender segregation in the workplace and enforce the principle of equal pay for equal work. She would like to know whether the 90-day trial period for new employees had been abolished completely, or if it was still used in companies with under 20 employees.

60. Under recent legislative reforms, the collective bargaining power of trade unions had been weakened and employers had been given greater flexibility. Were there plans to introduce measures to ensure parity between employers and employees? Furthermore, the country had issued a reservation in respect of article 8 of the Covenant on the grounds that it was not compatible with effective trade union representation and orderly industrial relations. She would appreciate further information on the trade union situation in the country and on any plans to withdraw the reservation.

61. She would like to hear whether the new Government was planning to review the current social security system, for example to allocate benefits on the basis of individual needs, and whether it would consult the people affected by social services and benefits. She also wished to know why the contracts for social services provided by Māori were reviewed annually, while other equivalent contracts were reviewed at five-year intervals. Where there plans to revise that requirement?

62. As there was no evidence that imposing benefit-related sanctions encouraged unemployed persons to find work, she asked whether such sanctions were still applied. The Committee had been told that it was possible for the Government's online system for reporting benefit fraud to be used for malicious purposes; that issue should therefore be addressed.

The meeting rose at 6 p.m.

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Committee on Economic, Social and Cultural Rights

Sixty-third session

Summary record of the 19th meeting
Held at the Palais Wilson, Geneva, on Friday, 23 March 2018, at 10 a.m.

Chair: Mr. Kedzia (Vice-Chair)

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The meeting was called to order at 10 a.m.

Consideration of reports (*continued*)

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Fourth periodic report of New Zealand (*continued*) (E/C.12/NZ/4 and E/C.12/NZ/QPR/4)

1. *At the invitation of the Chair, the delegation of New Zealand took places at the Committee table.*

2. **Mr. Little** (New Zealand) said that disclosure statements, which referred to the compliance of draft legislation with international obligations, including the Covenant, would soon be obligatory for all bills coming before Parliament. Although no specific data was currently available on the total number of disclosure statements made to date with references to international instruments, selected examples included references to the Convention on the Rights of the Child in the statement relating to the national child poverty strategy and references to the Sustainable Development Goals in the disclosure statement relating to legislation on residential tenancies.

3. While it was true that the results of a survey of a cohort of students enrolled on a bachelor's degree in 2009 had indicated that 38 per cent had not completed their undergraduate studies within the eight-year period covered by the survey, that group had included adults who had only enrolled on certain modules and had never intended to complete the degree programme. A more reliable study of a cohort of students under the age of 20 had found that 76 per cent of students had completed at least a bachelor's degree within six years, 19 per cent had discontinued their studies and 5 per cent were still in higher education.

4. In order to ensure the independence of appointments to the New Zealand Human Rights Commission, applications were considered by a panel consisting of government officials and members of civil society.

5. **Mr. Taula** (New Zealand) said that disability employment data, including from a survey on disability, were published by Statistics New Zealand. To improve data quality, a working group, whose members included persons with disabilities and their representative organizations, had been established to provide advice and input, with the aim of contributing to the availability of new sources of disaggregated data.

6. The Government had no plans to amend existing legislation on reasonable accommodation. A wide range of services existed to integrate persons with disabilities into the labour market; they included training grants, internships and workplace modifications services. The national disability strategy was implemented through a comprehensive disability action plan that covered cross-government measures to enhance access to information, justice and technology, and to improve accessibility with regard to transport and housing. Rather than a purely medical or purely social model for its disability policies, the Government had opted for a mixed model. It was examining alternatives to the minimum wage exemption, which had been introduced to create job opportunities, foster inclusive employment and offer choices to persons with disabilities who could not find work on the open labour market. The majority of those covered by the exemption worked for companies that exclusively employed persons with disabilities.

7. **Mr. Little** (New Zealand) said that the new Government aimed to strengthen the labour inspection system. New occupational health and safety legislation had been introduced in response to public concerns about fatal accidents in the workplace. It also sought to improve the standing of workplace occupational safety and health committees: worker representation was vital to ensuring effective health and safety at work.

8. Measures were being taken to restore rights and reinstate the previous means of determining equal pay for work of equal value. The Government was working with the National Advisory Council on the Employment of Women on a pilot programme to support

women returning to careers in the information technology sector and their employment in non-traditional professions, such as in the construction industry.

9. The Government was committed to upholding the right to collective bargaining, and reforms introduced in 2017 had repealed regressive provisions and restored certain rights. For example, the new Government had taken steps to prohibit employers from unilaterally abandoning multi-employer collective bargaining negotiations and to restore the presumption that the collective bargaining process would result in a collective agreement. The Government was currently reviewing the collective bargaining framework, with a view to expanding the system. The applicability of the 90-day trial period at the start of an employment contract had been limited to workplaces with fewer than 20 workers.

10. On the issue of the reservation submitted under article 8 of the Covenant, he said that, while the Government was committed to effective trade union representation and collective bargaining rights, only strike action for economic reasons was lawful in New Zealand. Neither sympathy strikes nor those relating to social causes were permitted. The Government had no plans to change its position. Nevertheless, the authorities intended to take a progressive approach to labour relations and trade union rights.

11. Even if no explicit reference had been made to social security as a priority area, the Government was nevertheless committed to progressive and effective social security services. Indeed, social security measures provided the backbone for many of the Government's policies and strategies, including on child poverty.

12. **Mr. Taula** (New Zealand) said that the Government planned to review the national welfare system, including the sanctions imposed for non-compliance, in order to make sure that it was enabling rather than punitive. In principle, the sanctions regime was aimed at ensuring that people met their obligations. It was a graduated system of penalties, whereby non-compliance resulted in an incremental loss of benefits. However, sanctions were only imposed on a tiny proportion of non-compliant benefit claimants, and 40 per cent of persons sanctioned either had their sanction orders overturned or immediately met their obligations. Moreover, in cases involving mitigating factors such as addiction, support would be provided before sanctions were considered.

13. **Mr. Little** (New Zealand) said that government contracts signed with external social service providers varied in length depending on the type of activity involved. While the benefit fraud hotline operated by the Ministry of Social Development did receive some malicious calls, staff took steps to identify genuine reports. In 2017, staff had followed up on 2,300 of nearly 12,000 calls. The filtering process ensured that only genuine disclosures were investigated. There were no plans to do away with the hotline. The review of the social security system would include broad consultations, including with service providers, representative civil society organizations and the general public.

14. The Government sought to ensure employment opportunities for Māori and Pasifika, women, young people and persons with disabilities. Measures included investment in the regions, including those with large Māori populations, amounting to 1 billion New Zealand dollars ($NZ) per year, a fund to promote youth employment and the Families Package, which included measures to enhance household incomes.

15. **Ms. Shin** (Country Task Force) said that, given that the majority of complaints received by the Human Rights Commission were related to disability issues, she would like to know what was being done to ensure that the legal requirement to provide reasonable housing for persons with disabilities was widely understood and upheld. As the duration of some contracts with social service providers was limited to a single year, it would be interesting to know which activities were subject to that requirement.

16. While commending New Zealand for achieving one of the smallest gender pay gaps in the world, she asked whether the statutory approach to equal pay for work of equal value introduced in response to the successful claim filed by care and support workers in the aged and residential care sector would also apply to women working in other sectors. She also asked what was being done to prevent the exploitation of migrant workers.

17. **Ms. Bras Gomes** (Country Rapporteur) said that it would be advisable to include explicit reference to the Covenant in disclosure statements. While commending the

delegation on the clarity and comprehensiveness of the data provided, she asked why the majority of persons with three or more jobs were women. Noting that youth guarantee schemes were rarely successful, she wished to know what was being done to meet the needs of young persons with regard to employment. She also asked how the Government was implementing its plans to combat zero-hours contracts and what progress had been made towards carrying out the planned social security review. Lastly, she noted that the use of sanctions to punish non-compliance with welfare measures was harmful, as the recipients often had no other form of support and were unable to comply with their obligations.

18. **Ms. Shin** said that she wished to know how the Government intended to monitor the application of the 90-day trial period by companies with fewer than 20 employees, given that the majority of companies in New Zealand fell into that category.

19. **Mr. Little** (New Zealand) said that the Human Rights Commission had a dedicated commissioner for disability issues, who was responsible for handling complaints and raising awareness of disability rights, in particular among service providers. Although awareness was increasing, much remained to be done. Contracts with social service providers were limited to a single year if the project was a pilot; longer contracts were granted for ongoing commitments.

20. Following the success of the claim lodged by aged and residential care and support workers, women working in other fields had also brought similar cases. However, within the female-dominated industries, workers of each category would have to mount their own claim before they could enjoy the same benefits. Several organizations were helping them to do so. A legislative framework was also being developed to determine appropriate pay scales for all sectors without recourse to the courts.

21. The Labour Inspectorate was working with employers active in the sectors in which most migrant workers were employed. It had found that overseas students, who had the right to work 20 hours a week, were frequently being exploited. Penalties had been imposed on the employers concerned, and efforts to combat the problem were ongoing.

22. Although the majority of companies in New Zealand were classified as small businesses and were thus entitled to use the 90-day trial rule, in fact half of those companies had no employees and the rest employed only 30 per cent of the total workforce. An employer who wished to implement a 90-day trial period needed to sign a written employment agreement with the employee, and employees who were exploited had recourse to procedures through which they could ensure that their rights were respected. However, as employers were able to dismiss employees without reason during the 90-day trial period, employees so dismissed had no legal recourse and thus there were no statistics on such cases.

23. With regard to disclosure statements, he would convey the Committee's suggestions to his Government to ensure that explicit reference to the Covenant was inserted.

24. Although it was true that the majority of persons with three or more jobs were women, it should be noted that some women actively chose to work multiple jobs as it suited their lifestyle. However, some women were in that position out of necessity. Steps needed to be taken to ensure that they were not placed at a disadvantage under the labour framework.

25. The Government had a number of initiatives for young persons who were not in education, employment or training. All the initiatives included training elements to teach transferable skills. A subsidy for apprenticeships was also available.

26. **Mr. Sadi** (Country Task Force) said that, given that New Zealand was a developed country, he wished to know what the causes were behind the high rates of child poverty, housing deprivation and overcrowding and what was being done to address those issues. He also asked why housing was generally poorly heated and why so little social housing was available

27. Turning to the issue of an affordable and safe water supply, he expressed concern at reports of persistent difficulties in obtaining access to safe drinking water. The Havelock North Drinking Water Inquiry had found widespread and systematic failings in the supply

of safe drinking water throughout New Zealand. Nearly 800,000 people, or about 20 per cent of the population, were reportedly supplied with unsafe drinking water. Furthermore, it was reported that adequate compensation for damages suffered during the Canterbury earthquake and the 2016 earthquake in Kaikoura had apparently not been provided to many claimants.

28. He would welcome information on the reasons for the major mental health problems in the State party. He also invited the delegation to comment on the New Zealand Settlements Act of 1863, which had provided for the confiscation of land belonging to indigenous peoples.

The meeting was suspended at 11.10 a.m. and resumed at 11.30 a.m.

29. **Mr. Little** (New Zealand), referring to zero-hours contracts, said that employers who breached the law were prohibited from employing migrant workers and were liable to penalties. Since the prohibition of such contracts, 158 employers had been subjected to stand-down periods, and fines totalling more than $NZ 1 million had been imposed. Under the regime of instant penalties for infringements of other employment rights, fines totalling $NZ 469,000 had been imposed on 162 employers. Two cases of migrant worker exploitation had led to prison sentences.

30. Factors contributing to the problem of child poverty included rapidly rising accommodation costs. Rents had increased owing to the housing shortage, and low-income families' inability to pay high rents had led to a rapid increase in homelessness. However, most homeless people lived in overcrowded houses rather than on the street. The housing shortage was attributable to rapid population growth, especially in Auckland. Immigration rates were high and the housing stock had failed to cater for the increasing demand. Purchasers of property also included an enormous number of non-resident investors. Furthermore, local authorities frequently failed to take planning decisions on residential housing in a timely manner. The new Government was seeking to address such problems by imposing restrictions on non-resident offshore buyers and by providing for the construction of 100,000 affordable homes over the next 10 years under the KiwiBuild programme. It was also improving the rights of persons who depended on rental accommodation. Previous Governments had sold off many houses that had been used for social housing purposes. The new Government had therefore adopted a programme to build high-quality social housing.

31. Income disparity had grown, and wage increases for the lower levels of the workforce had been modest or non-existent. On the other hand, the lowest-paid 10 per cent of the workforce had benefited from a rise in income owing to increases in the minimum wage. Structural changes in the manufacturing sector had led to a decline in employment with large-scale manufacturers and in the number of well-paid jobs. There had been a growth in service industry jobs, which generally involved lower rates of pay. In addition, benefit reforms had adversely affected household incomes. The new Government was taking action through tripartite procedures to promote access to higher wages and to enhance productivity.

32. As water standards had not been properly monitored by the central and local authorities, the new Government was committed to imposing and strictly monitoring twenty-first century water standards. Unfortunately, many local authorities had failed to modernize their water supply infrastructure, which was exposed to leakages and contamination. Farming intensification could also lead to contamination. The Havelock North Drinking Water Inquiry had revealed that the water that had caused the incident in 2016 had been contaminated by *Escherichia coli* from livestock. On the other hand, overseas investors were seeking to extract the country's high-quality spring water for exportation.

33. About 2,600 of the roughly 190,000 claims for compensation following the 2010 and 2011 earthquakes remained unresolved. The Government was looking into the possibility of establishing a special tribunal to deal with the claims as expeditiously as possible.

34. The competent authorities were taking steps to ensure that conditions of depression and post-traumatic stress disorder were properly treated. Mental health issues were a

serious problem in some rural areas where people lived in isolation. A single incident could wipe out crops in weather-dependent industries and render their operations unviable, causing inordinate stress in rural households. Rural organizations such as Federated Farmers and Rural Support Trusts were developing networks to assist rural communities.

35. The impact of colonization, which had entailed confiscation of the land of indigenous peoples and suppression of their cultural expression and language, was ongoing. Action to address breaches of the 1840 Treaty of Waitangi, which guaranteed the same rights to the Māori people as to British citizens, was therefore of key importance. The Treaty settlement process had gone some way towards improving the status of Māori in many communities. Settlement should have taken place by consent rather than by conquest, but the Treaty principle of consent had been breached, contributing to the many current mental health issues. The new Government had launched an inquiry into gaps in mental health services and would give top priority to appropriate treatment and support.

36. **Ms. Liebenberg** said that the Committee had been informed that the financing of housing was a key issue in the State party, not only for lower income groups but also for persons with disabilities, older persons, widows, Māori and their extended families, and women who had been subjected to domestic violence. The Special Rapporteur on adequate housing had recently noted that housing was treated as a commercial and financial asset as opposed to a fundamental human right.

37. According to a 2017 report in *The Economist*, housing in the State party was the most unaffordable in the world and house prices in Auckland had risen by, on average, 75 per cent in the previous four years. Dramatic increases had also been recorded in rental housing prices. For instance, rents in Wellington had increased by up to 8.3 per cent, while incomes had risen by only about 1 per cent. One in every three low-income households spent over 40 per cent of their income on housing.

38. She asked what steps were being taken to regulate the private housing market, for example through rent control and measures to restrict speculation, especially in cases where houses were left vacant for a lengthy period. She also wished to know how the legal system dealt with evictions by public authorities or private actors such as banks and landlords. Could the courts investigate the impact of an eviction on vulnerable groups and did they grant orders of alternative accommodation if the result was homelessness? She urged the State party to examine the Committee's general comments Nos. 4 and 7, which outlined the implications of a rights-based approach to housing.

39. **Mr. Uprimny** said that the Committee had been informed that there were significant disparities in rights between Māori and Pasifika and other New Zealanders. They reportedly recorded high rates of chronic diseases and had difficulty in accessing health services because of socioeconomic barriers. For instance, Māori were 1.4 times more likely to be denied access to primary health care. He requested information on concrete strategies being developed by the new Government to reduce those inequalities.

40. **Mr. Chen**, noting that, of the 178 priorities in the Human Rights Commission's Action Plan for Human Rights, adopted in 2005, only 21 had been achieved by 2008 and no progress at all had been made on 24, asked whether the second Action Plan, for the period 2010–2015, had been produced.

41. **Ms. Bras Gomes** said that it would be interesting to hear whether the Government intended to extend its well-structured strategy for reducing child poverty to encompass poverty in general. Given the positive impact of the zero-fees policy for primary health-care visits for children under 13 years, she wished to learn whether it would be feasible to extend it to cover all children under 18 years. While the Action Plan for Human Rights was commendable for its approach to the implementation of the recommendations made to the State party within the framework of the universal periodic review, it would be fitting to expand the remit of the Plan to include the recommendations made by human rights treaty bodies.

42. **Mr. Little** (New Zealand) said that the Government considered housing to be a human right and was striving to ensure that residential housing was not treated as a commercial asset. Under the bright-line test, the resale of residential property that had not

been occupied since being purchased was subject to capital gains tax. The new Government had extended the qualifying period for the test from two to five years. Overseas investors were no longer permitted to buy existing property in New Zealand; they were instead obliged to build a new house.

43. With regard to evictions, landlords were obliged to follow a statutory process that was overseen by the Tenancy Tribunal and were not permitted to evict tenants with little or no notice unless they had caused wilful damage to a property. A separate procedure governed the process to be followed by banks when forcing the sale of a property in case of mortgage payment defaults, including with regard to the disposal of the proceeds.

44. **Ms. Meijer** (New Zealand) said that, although many challenges remained, some progress had been made in addressing the disparities in health outcomes for different population groups. As a result of the zero-fees policy for children under 13 years, the number of doctor's visits had increased by 15 per cent among Māori children and by 11 per cent among Pasifika children in the two years to 2016. The number of Māori women accessing breast cancer screening had risen from 51 per cent to 65 per cent between 2007 and 2015, while the rates of sudden unexpected deaths among Māori infants had dropped from 4 per 1,000 live births in 1996 to 1 per 1,000 live births in 2012. First-time hospital admissions for rheumatic fever, which almost exclusively affected Māori and Pasifika children, had dropped by 48 per cent between 2012 and 2016.

45. The Government was making efforts to improve the performance and accountability of district health boards by raising the requirements in the area of equitable outcomes when negotiating annual contracts with them. The authorities were working collaboratively with underserved populations to design a range of innovative services for the Māori and Pasifika population groups, older persons and persons with disabilities.

46. **Ms. Greaney** (New Zealand) said that the Human Rights Commission was working with the relevant agencies to update the Action Plan for Human Rights to include the recommendations of human rights treaty bodies and the Sustainable Development Goals. It had also set up an interactive online tool to provide citizens with timely access to up-to-date information on the Government's progress against its international commitments and obligations.

47. **Mr. Little** (New Zealand) said that the Government had made tackling the chronic problem of child poverty one of its top priorities. Addressing that issue would inevitably have a positive impact on poverty in general. The general legislation regulating social security also helped to alleviate poverty and hardship for all.

48. The possibility of extending the zero-fees policy to all children under 18 years was being considered. An advisory group had been set up to advise the Minister of Health on a broad range of strategic actions to improve the health of all citizens and overcome the effects of long-term underinvestment in the health-care sector.

49. **The Chair** said that the Committee appreciated the State party's willingness to comply with the newly introduced use of lists of issues prior to reporting. In its concluding observations, the Committee would highlight three priority recommendations for follow-up within 18 months.

The meeting rose at 12.30 p.m.